

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

	x
The STATE OF NEW YORK, ALEXANDER B.	:
GRANNIS, as Commissioner of the New York State	:
Department of Environmental Conservation, and the	:
NEW YORK STATE DEPARTMENT OF	:
ENVIRONMENTAL CONSERVATION,	:
	:
Plaintiffs,	:
	:
UNITED BOATMEN OF NEW YORK, INC., NEW	:
YORK FISHING TACKLE TRADE ASSOCIATION,	:
INC., and THE FISHERMEN'S CONSERVATION	:
ASSOCIATION,	:
	:
Intervenor-Plaintiffs	:
	:
-against-	:
	:
GARY LOCKE, in his official capacity as Secretary of	:
the United State Department of Commerce, the UNITED	:
STATES DEPARTMENT OF COMMERCE, JANE	:
LUBCHENCO, in her Official Capacity as Under	:
Secretary of Commerce and Administrator for the	:
National Oceanic and Atmospheric Administration, the	:
NATIONAL OCEANIC AND ATMOSPHERIC	:
ADMINISTRATION, JAMES W. BALSIGER, in his	:
Official Capacity as the Acting Assistant Administrator	:
for the NATIONAL MARINE FISHERIES SERVICE,	:
and the NATIONAL MARINE FISHERIES SERVICE,	:
	:
Defendants,	:
	:
ATLANTIC STATES MARINE FISHERIES	:
COMMISSION,	:
	:
Intervenor-Defendant.	:

x

**PLAINTIFFS' LOCAL RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY
JUDGMENT ON CLAIMS 1-3**

Pursuant to this Court's Local Rule 56.1, plaintiffs State of New York, Alexander B.

Grannis, as Commissioner of the New York State Department of Environmental Conservation,

and New York State Department of Environmental Conservation (collectively “New York”) respectfully submit this statement of undisputed material facts in support of their motion for partial summary judgment on claims 1-3 of their first amended complaint against defendants Gary Locke, as Secretary of the United States Department of Commerce, the United States Department of Commerce, Jane Lubchenco, as under Secretary of Commerce and Administrator for the National Oceanic and Atmospheric Administration, the National Oceanic and Atmospheric Administration, James W. Balsiger, in His Official Capacity as the Acting Assistant Administrator for the National Marine Fisheries Service, and the National Marine Fisheries Service (collectively the “Federal Defendants”).¹

1. On May 23, 2008, the Federal Defendants, through defendant National Marine Fisheries Service (“NMFS”), issued “Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2008,” 73 Fed. Reg. 29990 (May 23, 2008), containing the agency’s final management measures for recreational summer flounder angling in federally regulated marine waters or from federally permitted vessels for 2008.

2. The Federal Defendants filed the administrative record for this final rule with the Court, and provided copies to the other parties, on or around September 15, 2008.

¹ This case involves review of final agency actions under the standards of the Administrative Procedure Act, to be determined on the administrative record. The parties have not taken discovery. There are two administrative records in this case, one filed by the Federal Defendants, and one filed by intervenor-defendant Atlantic States Marine Fisheries Commission (the “Commission”). The Commission also filed a supplement to its initial record. Although New York only has claims against the Federal Defendants, the federal actions New York is challenging arose from a joint federal-state rulemaking, and the federal fishery management measures that New York is challenging were adopted after being developed under, and approved by, the Commission. In an earlier decision in this action the Court looked to both records in evaluating the Federal Defendants’ actions during the 2008 Rulemaking. Consequently New York is basing its motion for summary judgment on both administrative records.

3. Intervenor-defendant Commission filed the administrative record for the actions being challenged herein by intervenor-plaintiffs United Boatmen of New York, Inc., New York Fishing Tackle Trade Association, Inc., and Fishermen's Conservation Association, and provided copies to the other parties, on or around March 31, 2009.

4. The Commission filed a supplement to its administrative record, and provided copies to the other parties, on or around June 1, 2009.

5. On April 1, 2009, the Federal Defendants, through NMFS, published their proposed "Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2009," 74 Fed. Reg. 14760, No. 61 (April 1, 2009), containing the agency's proposed management measures for 2009 for recreational summer flounder angling in federally regulated marine waters or from federally permitted vessels.

Dated: New York, New York
June 12, 2009

Respectfully submitted,

ANDREW M. CUOMO
Attorney General of the State of New York

By: /s/ Andrew J. Gershon
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